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From:

Sent: Friday, May 29, 2009 12:55:31 PM

To:

Cc:

Subject: Form 1040-SS: Filing Deadline Extension Questions

Dear

Here are the questions you asked and the answers. Please let me know if you have any more questions. Thank you, and enjoy your weekend!

Questions

1. May taxpayers who file Form 1040-SS receive an extension of the deadline for filing?
2. May taxpayers who file Form 1040-SS be eligible for an automatic deadline extension to the fifteenth day of the sixth month under §1.6081-5?
3. Why does paragraph 3 of IRM 3.38.147.15.2 only refer to the Virgin Islands?

Answers

1. No. There is no basis for an extension for filers of Form 1040-SS. § 31.6081(a)-1(a)(1) specifically provides that for any return or other document required by the Federal Insurance Contributions Act (FICA), an extension of the filing deadline is not allowed. As Form 1040-SS is used, in part, to report net earnings from self-employment and to pay self-employment tax on that income, the form is a return required by FICA. As such, no extension of time to file is allowed for this form.
2. No. Form 1040-SS is more analogous to Form 941 filed by employers in the United States than to Form 1040. Form 1040-SS does not report income tax but rather self-employment tax. § 1.6081-5 grants automatic extensions for "filing returns of income" and therefore does not apply to Form 1040-SS, which is not a return of income.
3. It is unclear but it is likely incorrect. While the U.S. Virgin Islands are treated separately from other U.S. possessions elsewhere in the tax code, *compare* § 932 with §§ 931 and 933, there does not appear to be any basis for its distinctive treatment in paragraph 3 of IRM 3.38.147.15.2 (IRM 3.38.147.12.3 also states that U.S. Virgin Islands citizens and residents have an automatic extension of time to file a Form 1040-SS to June 15th). To the extent that the deadline for Virgin Islands citizens and residents to file Form 1040-SS is extended because of § 1.6081-5(a)(5), it is an incorrect interpretation of the law because Form 1040-SS is not a return of income. Note that as this is an international tax situation, there may be some other authority (such as a tax treaty) that might provide for an extension.